

at the DSX that it would have at U S WEST's MDF. The only difference is that an interconnector would have to man the leased physical space in order to exercise that control on the DSX in its leased physical space. Without the DSX, U S WEST will have to do all the work at the MDF.⁴⁴

U S WEST does not read the Commission's EIC Order⁴⁵ as requiring the subscription of our labor force to this critical aspect of an interconnector's network or service offerings. That EIC Order clearly did not require LECs to create interconnections at some of the most public and common pieces of their network. Nor did the EIC Order divest or relieve interconnectors of their own responsibilities to invest in, and enhance, their own networks and to use their own personnel to run those networks. We are confident the Bureau will agree.

c. Relation of DSX Requirement and Repeaters

While the DSX allows for the handoff of the templated DS1 and DS3 signal from the interconnector to U S WEST, it does not - - by its mere existence -- cause the need for repeaters, a correlation some commentators claim is concomitant.⁴⁶ The need for repeaters is caused by the distance limitations of the

⁴⁴See U S WEST Direct Case at 84-85.

⁴⁵See In the Matter of Expanded Interconnection with Local Telephone Facilities, Amendments of the Part 69 Allocation of General Support Facility Costs, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd. 7369 (1992) ("EIC Order").

⁴⁶See, e.g., Teleport/Denver at 17-18.

signals themselves, as discussed above. Repeaters will only be used in those circumstances where distance limitations between the DSX in the interconnector's leased physical space and the U S WEST's DSX are exceeded. While this will not be in every case, we predict it will be in almost every case.

5. Depreciation/Cost of Money/Tax Expense

TCG claims that the costs associated with the various work groups and the cost of \$266.31, "loaded up to a monthly rate of \$487.00, for DS1 provisioning" must "include a depreciation/cost for money/taxes expense, although there should be no investment for this nonrecurring charge."⁴⁷ TCG is correct in its assumption that there should be no investment for this nonrecurring charge. The nonrecurring cost for U S WEST's DS1 cross connection charges does not include any direct investments. However, "depreciation/cost of money/taxes expense" are part of the administrative expense factor.

Part of the administrative expense factor includes annual expenses or annual carrying charges associated with an allocation of investments that are related to the administrative expenses. Therefore, there will be depreciation, cost of money, income tax and ad valorem tax expenses as part of the nonrecurring cost.

6. DS1/DS3 Overheads

⁴⁷TCG at A-5.

ALTS argues that U S WEST failed to provide the comparable overhead loadings for its DS1 and DS3 services, and that the information U S WEST did provide was "not relevant."⁴⁸ ALTS claims that instead U S WEST provided only overhead factors for "generic DS1 and DS3 services" based on calculations of (what U S WEST described) as the ratio of total revenues for all rate elements in each fixed period divided by total costs of those elements. ALTS argues that U S WEST's response did not satisfy the Bureau's requirement and, in fact, appeared calculated to "obscure the very comparison that the Commission has stipulated is necessary" to determine the reasonableness of U S WEST's rates.⁴⁹

Once again, despite the shrillness of its challenge, ALTS's argument is fundamentally in error. The Bureau's Designation Order required the LECs to provide "overheads for generic DS1 and DS3 services, as well as discounted volume and term services . . . "⁵⁰ In our Direct Case, U S WEST did just as the Bureau requested.

U S WEST responded that overhead loadings for DS1s and DS3s are inappropriate for new services because price changes, under price cap rules over the last three years, reflect overhead loadings appropriate for mature services. Notwithstanding U S WEST's objection or the relevancy of the DS1 and DS3 overhead

⁴⁸See ALTS at 10.

⁴⁹Id.

⁵⁰Designation Order at ¶ 22(c)(1) (emphasis added).

loadings, U S WEST did provide the aggregated overhead loadings for DS1 and DS3 month to month and term rates.⁵¹ For this reason, ALTS's objection should be summarily dismissed.

C. Tariff Review Plan ("TRP") Issues

1. TRP Loadings

Teleport/Denver states, erroneously we show below, that "After including loadings in the total installed investment, [U S WEST] then adds additional loadings at lines 21-50, but with the loadings at line 1 unspecified, it cannot be determined that there is no duplication in the annual charge factors provided at lines 21-50."⁵² Teleport/Denver also speculates that "the itemized overhead loadings appear to represent a spreading of general overheads for the central office to include the services to the interconnector as well as other services provided by [U S WEST]."⁵³

Teleport/Denver is incorrect in its assumptions. The total installed investment is the capital cost requirement for each rate item, as shown on line 1 of U S WEST's TRP. The costs shown on lines 21 through 50 are the direct annual expenses associated with the investment identified on line 1. All the expenses shown on lines 21 through 50 are direct expenses and have a direct

⁵¹See U S WEST Direct Case at 39.

⁵²Teleport/Denver at 7.

⁵³Id.

relationship or cost causation to the service being provided. There is no duplication of costs or overheads⁵⁴ in the annual charge factors.

Line 21, reflecting the depreciation expense, is only part of the direct annual charge factor. Other aspects of that factor include other expenses as shown on lines 22 through 50.

The administrative expenses shown on lines 34 through 41 are part of the direct annual charge factor and are not overhead loadings. Administrative expenses are those expenses which generally vary in proportion to direct expenses, and which are not sufficiently quantifiable to be treated as direct expenses. Such expenses cannot be selectively passed on in the form of specific nonrecurring or recurring expenses to individual "cost causing" customers in the same fashion as direct expenses (such as service order costs, billing or capital expenses). Rather, administrative expenses are more appropriately treated as expenses related to direct expenses, which are borne by the product offering in proportion to the direct expenses.

Part of the administrative expense factor includes annual expenses or annual carrying charges associated with an allocation of investments that are related to the administrative expenses. Therefore, there will be additional depreciation, cost of money, income taxes and ad valorem taxes, in addition to the investment shown on line 1.

⁵⁴Common costs or overheads are not included in the direct costs in any cost study provided by U S WEST.

To the extent that the above explanation was necessary to clarify U S WEST's TRP submissions, said explanation should alleviate Teleport/Denver's concerns. Their opposition to U S WEST's Direct Case in this regard should be rejected.

2. Depreciable Lives

ALTS criticizes U S WEST for not "justifying" the depreciable lives associated with its investments.⁵⁵ In preparing U S WEST's Direct Case, it was thought that U S WEST used, for purposes of rate establishment, the depreciable lives that were arrived at for U S WEST through the three-way meeting process (which U S WEST described).⁵⁶ Given that, U S WEST felt that no other "justification" was needed, as the Commission was an active participant in that depreciable life-setting process.

Since that time, we have learned that U S WEST did not use those depreciable lives. Thus, with our apologies to the Bureau and to those reviewing our Direct Case, we provide further information on this matter herein.

Once depreciable lives for investment are established pursuant to the three-way meeting process, a LEC is still free to file depreciable lives contrary to those arrived at. U S WEST has done that with regard to the depreciable lives associated with much of our investment.

⁵⁵See ALTS at 11.

⁵⁶See U S WEST Direct Case at 8-9.

The depreciable lives used in developing the EIC costs were calculated on a forward-looking (or prospective) basis. The lives used in our TRP were a composite of state-specific proposed lives, weighted against investment. These depreciable lives have been submitted to the Commission in U S WEST's Depreciation Rate Study, in conformance with Commission depreciation guidelines, incorporating historical experience, subject matter expert input and industry studies.

The depreciable lives contained in U S WEST's Depreciation Rate Study are considered to be economic lives and are used to calculate incremental costs for pricing considerations. The U S WEST Capital Recovery organization, through the triennial negotiations with the Commission and state depreciation staffs, provides substantial analyses to support these lives.⁵⁷

III. RATES AND CHARGES

A. Nonrecurring

1. Leased Physical Space Construction Charges

Sprint argues that U S WEST has inappropriately structured our EIC Tariff, claiming that U S WEST has sought to recover through our construction charges what are actually (Sprint alleges) recurring costs/expenses in a nonrecurring manner, i.e.,

⁵⁷The material is over four inches thick. U S WEST's Depreciation Rate Study is on file with the Commission, with each study done by state and year.

up front.⁵⁸ Sprint argues that such a rate structure will result in a mismatch of revenues and expenses, and should, therefore, not be permitted.

U S WEST disagrees. In those instances where nonrecurring charges were developed for capital and operating expense recovery, the responsible engineering organizations within U S WEST deemed these items of capital expenditure to be non-reusable (and, thus, non-recoverable) from any entity other than the interconnector ordering the EIC service.⁵⁹ U S WEST's EIC Tariff offering is a month-to-month offering. U S WEST has no term-assurance with respect to an interconnector's occupation.

⁵⁸See Sprint at ii, Appendix A at 7-9.

⁵⁹With no demonstrated history of demand for EIC service, and assuming (reasonably) that most entities desiring to purchase EIC service will do so fairly soon after the tariffing of switched EIC service, this is not an unreasonable assumption. While some third party may show up in the future interested in assuming the space in question, there is certainly no assurance of future occupation.

Teleport/Denver argues that interconnectors should be permitted to assign interconnector-specific facilities and/or to sub-lease interconnector space, since U S WEST has totally recovered its costs in these areas upon initial occupation. See Teleport/Denver at 21. This matter was not raised by the Bureau in its Designation Order. However, U S WEST herein responds to the suggestion.

Though U S WEST does develop a nonrecurring charge for equipment it deems non-reusable, U S WEST does not transfer title of ownership of that property to any third party. The property remains that of U S WEST, with a limited non-exclusive right to use granted to the interconnector. See U S WEST EIC Tariff at § 21.4.1(A). An interconnector, having no right, title or interest in the property is not free to transfer either title to or beneficial rights in that property to a third party, regardless of U S WEST's regulatory rate establishment.

Should an interconnector vacate the premises, the space in question is declared non-reusable.

In the same manner used by U S WEST in determining costs and rates for other non-reusable investments,⁶⁰ U S WEST calculated the capital costs and operating expenses for the EIC non-reusable investment as a nonrecurring charge,⁶¹ to ensure full recovery of these costs by U S WEST.⁶² That amount was then discounted to present a one-time (nonrecurring) charge.⁶³

Given the uncertain nature of EIC service (both its legal sustainability, its market potential, and U S WEST's particular EIC service configuration), this was both a prudent and reasonable service charge configuration. Objections to U S WEST's EIC Tariff approach should be rejected.

2. Preparation Fee

Contrary to the allegations of Teleport/Denver, U S WEST's construction costs for professional consulting fees are not being

⁶⁰See, e.g., U S WEST F.C.C. Tariff No. 2, § 2.6.4.

⁶¹Any tax obligations that U S WEST is subject to in relation to capital or expense-related issues are included in the cost development (consistent with how costs are developed for all U S WEST offerings) and are included in the cost floor used for determining prices.

⁶²Contrary to Sprint's argument, the use of nonrecurring charges to recover recurring costs is not, per se, improper. Sprint Appendix A at 8. Indeed, this option of payment is often requested by U S WEST's larger customers, as an alternative means of paying for service.

⁶³The discounting results in the present worth valuation of the service as it will be delivered over time.

uplicated in our physical/virtual EIC "preparation fee."⁶⁴

Following is a list of the work groups whose costs of operation are included in the preparation fee. As is clear, "Professional Consulting Fees" are not included.

- a) Product Market Implementation ("PMI") receives the request, verifies information, enters information into the mechanized system, monitors progress of the quotation, and reviews the final package sent from the System Design Center ("SDC") and calculates the applicable charges.
- b) The SDC coordinates the assembly of information from Outside Plant Engineering ("OSP"), Common Systems Planning Engineering Center ("CSPEC") and Business Resources, Inc. ("BRI") and forwards information to PMI. It also coordinates the assembly of the cost information for the interconnector-designated equipment, inputs information into a mechanized system and forwards information to Custom Systems Pricing.
- c) OSP reviews the request to determine appropriate conduit/innerduct lengths and estimated time intervals to complete the project.
- d) CSPEC provides floor space specifications to BRI and provides power, space, and cross-connection requirements to Equipment Engineer.
- e) BRI reviews the request and provides time intervals for completing the project to SDC.
- f) Transmission Engineering ("TE") provides provisioning and maintenance information and works with CSPEC on transmission equipment space, power, monitor and control information.
- g) Product Evaluation ("PE") evaluates the impact and costs of installing interconnector-designated equipment.

⁶⁴See Teleport/Denver at 15-16. U S WEST's professional consulting fees (their purpose and scope) are discussed further below at 41-42.

The work activities performed by these work groups are to prepare the quotation for the interconnector. They have nothing to do with what occurs after the quotation has been presented to the interconnector. Once the interconnector makes a determination to proceed, then U S WEST would utilize the services of a professional consultant (as discussed below at 40-41.

3. Manhole/Conduit Charges

TCG states that U S WEST assesses nonrecurring installation charges that appear to require that interconnectors pay for brand new conduits and manholes.⁶⁵ TCG is correct.

U S WEST's EIC Tariff does contain nonrecurring charges for the entrance enclosure and conduit. However, U S WEST's EIC Tariff also allows an interconnector to self-provision the entrance enclosure and conduit, provided a U S WEST inspector is present during the provisioning.⁶⁶

⁶⁵See TCG at A-6. A manhole is a shared enclosure which can accommodate up to three interconnectors. Costs and nonrecurring charges were developed to allow a single interconnector to pay for only a third of the costs of the enclosure.

⁶⁶See U S WEST's EIC Tariff at § 21.6.2(B).

B. Recurring

1. Charges for Power

a. DC Power Rate Element

ALTS and Teleport/Denver⁶⁷ voice concerns in their oppositions about the method that U S WEST is using to charge for power. ALTS, for example, argues that without metering "significant overcharges would result."⁶⁸ For ALTS to be correct, one would have to define an "overcharge" as being an expenditure by a CAP that was not directly correspondent to the actual amperage used by each individual CAP. Under the Communications Act, that is an unusual use of the term "overcharge."⁶⁹

A CAP is not "over-charged" when it pays a standard, averaged tariffed rate for service. To the extent that the tariffed charge is based on an amperage range, rather than individual metering, a CAP is paying for precisely the service described and identified in the tariff. Nor is a CAP "over-charged" when the cost to determine exact individual interconnector usage outweighs the benefit, either to the purchasing customers or the general consumer body, of doing so.

⁶⁷See ALTS at 28-29; Teleport/Denver at 21-22.

⁶⁸ALTS at 28.

⁶⁹Compare 47 U.S.C. §§ 203(c), 205(a).

Every effort has been made by U S WEST to meet the -48V DC power requirements of the interconnectors in the most economical manner possible. The economics do not support individual meters for individual interconnectors,⁷⁰ even if the provision of such meters is technically possible.⁷¹

The -48V DC amperage draw of transmission-type equipment in general is relatively steady and does not vary much with time. Therefore, individual circuit metering and monitoring of -48V DC current flow for each interconnector circuit is not a requirement for reasonably accurate tracking of the current usage per interconnector. Neither the Communications Act, nor any Commission order, requires anything more.

⁷⁰As previously stated by U S WEST: "It is U S WEST's experience that fiber and microwave power usage does not fluctuate to the extent that metering devices are justified. Providing a power-usage rate element that is based on actual measured interconnector usage would require additional nonrecurring costs for the installation of expensive metering [and monitoring] devices." U S WEST Direct Case at 71.

⁷¹See Teleport/Denver at 21-22. Teleport/Denver would, apparently, have this Commission prescribe EIC terms and conditions more to the liking of CAPs whenever a CAP can demonstrate that an alternative is "possible" and when the alternative provides a "more precise" manner of delivering the service. Neither the Communications Act, nor any Commission order, requires a LEC to craft offerings so that each customer variable is identified in the product and the pricing of the product. Such individuation looks very much like ICB pricing which, by itself, is not problematic, but which the Commission has discouraged with regard to EIC service, as well as for other generally-available tariffed offerings, e.g., dark fiber.

b. Heating, Ventilation, Air Conditioning ("HVAC")

(1) Need for Charges

Teleport/Denver argues that U S WEST's HVAC charges are, essentially, totally unwarranted. Teleport/Denver argues that because interconnectors are occupying space that has been constructed for the purpose of housing telecommunications network and switching equipment, and central offices presumably have already been engineered with appropriate HVAC (and redundant back-up systems), a LEC (U S WEST, in particular) will generally not incur additional HVAC costs (with the possible exception of accommodating additional heat load from multiple interconnectors' equipment).⁷²

While Teleport/Denver is correct that central offices have been engineered with certain network/telecommunications equipment requirements in mind, their conclusion is incorrect. Conversions to digital technology have rendered U S WEST's central offices without surplus or additional HVAC. EIC will force U S WEST to add HVAC capacity and humidification systems. U S WEST will incur costs for construction and engineering design efforts beneficial only to interconnectors. Those cost causers should cover U S WEST's costs.

To accommodate interconnectors (from the first through the last) in any one location, HVAC capacity must be added, either by

⁷²See Teleport/Denver at 12.

supplementing the existing system or by adding a separate package-type unit to serve the interconnectors' equipment heat load. The exact heat load that will be generated by EIC is not known at this time.

Teleport/Denver suggests that U S WEST should not need to charge interconnectors for HVAC because U S WEST's central offices should already have redundant HVAC.⁷³ It goes without saying that if U S WEST used its redundant HVAC as a source of supply to provide service to interconnectors, then it would no longer be available as a redundant back-up system for U S WEST's central office. The loss of these redundant systems for U S WEST's use poses certain added service risks for U S WEST's delivery of service to customers/subscribers other than interconnectors.

As to humidification, because of high maintenance costs and the risk of water damage to network equipment, U S WEST has generally not equipped our central offices with humidification systems. In locations that are humidified, the ability to deliver the optional humidification from the existing system to the hardwall-enclosed leased physical space areas will involve costs.

(2) Level of Charges

Teleport/Denver submits that U S WEST's charges for HVAC appear irrational, in that the charges for a mesh cage

⁷³Teleport/Denver at 12.

construction appear to be higher than the charges for a hardwalled enclosure.⁷⁴ However, the type of wall or enclosure is irrelevant to the cost for HVAC. The assignment of that cost is based solely on the anticipated heat dissipation of the interconnector's transmission equipment placed within the leased physical space. The amount/level of that heat dissipation will not change depending on the kind of enclosure.

ALTS argues that U S WEST loads very high charges into the HVAC maintenance rate element. It argues, erroneously as demonstrated below, that U S WEST "imposes a charge of \$133.33 per month for [its] maintenance of the-[HV]AC system that is located in the collocators space," and presses its argument that such maintenance should be included in the base rent.⁷⁵ ALTS also argues that U S WEST presented an inadequate explanation with regard to its \$33.33 humidification charge.⁷⁶

U S WEST has repeatedly tried to make clear what is included in its base rent. Fundamentally, the price for base rent was established by market factors. When asking for market information, U S WEST advised that space maintenance⁷⁷ and

⁷⁴Id.

⁷⁵See ALTS at 31.

⁷⁶Id. at 31-32.

⁷⁷U S WEST requested that space maintenance be backed out from the market rate because general administrative space-market rates would not accurately reflect those maintenance expenses associated with central offices. They would be lower. While Teleport/Denver contends that it is "not satisfied" that the EIC rates that U S WEST has established do not contain such

(continued...)

operating costs should be excluded from the market price estimation. U S WEST then added back in certain costs, based on our information and experience with costs for certain activities.

The \$133.33 is the cost of preventative maintenance for the entire enclosure. This includes climate controls, filters, fire alarm systems (not fire suppression systems), the HVAC system, bi-weekly housekeeping services (sweeping, spot cleaning, trash removal), and general repair and maintenance of the interconnector's leased physical space.

The \$33.33 per month recurring maintenance rate for the optional additional humidification element, which is only available with EIC hard-wall enclosures, includes the cost of water supplied to the humidifier, the labor and materials to clean the drain and make monthly preventative maintenance adjustments as recommended by the manufacturer, and the replacement of parts such as the canister/boiler vessel and the associated electrodes used to boil water. The cost is clearly reasonable given the associated tasks.

⁷⁷(...continued)
maintenance components (see Teleport/Denver at 14-15), we trust the Bureau will be. U S WEST has provided information showing how our central office maintenance costs were derived and how they were added to our base rent market-derived rate. See U S WEST Direct Case at 45-49.

IV. LEASED PHYSICAL SPACE

A. Floor Space and Rental Rate Development

1. Use of Market Rate In Rate Development

There is a fundamental difference of opinion with regard to what should form the basis of the cost determination for floor space. Most of the commentators argue for some kind of "embedded cost" approach.⁷⁸ The use of alternative approaches, such as "market," "space replacement", or "current appraised value," are all claimed to be inappropriate.

The suggestion that U S WEST should price its real estate from the floor of an embedded cost is wrong from both an economic and a provisioning standpoint. From the perspective of much economic theory, embedded costs are not particularly helpful in determining the prices for products or services. Embedded costs are sunk costs. Embedded costs for land and buildings are based on historical costs which were paid in the past, and bear no necessary representation or correlation to the true value or costs for replacement or new construction.

From a provisioning standpoint, embedded cost is almost irrelevant. If an interconnector were not in our central office, they would be somewhere nearby. The market value of the real estate in the same geographic area (perhaps modified up or down for the "central office" aspects of the real estate) is the more

⁷⁸See, e.g., Sprint at ii, 3, Appendix A, pp. 8, 10-11; MCI at 8-9.

appropriate indicator of the cost avoided, and the cost substitution, in pricing EIC service.

As U S WEST has repeatedly argued, the Communications Act does not address a LEC's provision of real estate to third parties. But to the extent that the Commission has determined that such provisioning constitutes Title II service, when offered in conjunction with Special or Switched EIC, then the general tariffing provisions of the Communications Act come into play.

U S WEST, barring any Commission order to the contrary, was free to fashion its tariff as it deemed reasonable. And we did. The appropriate value of collocation space is market value. While we will not accord the space being occupied the status of an interconnector "premises," it is clear that an interconnector is using our real estate in lieu of purchasing/leasing real estate elsewhere. The interconnector, in essence, is substituting our real estate for real estate it would have to purchase/lease on the open market, were it not for regulatory mandates.

MFS chastises U S WEST for not using publications in establishing our market rate.⁷⁹ No such thing was required.⁸⁰ And, U S WEST is not aware of any publication that identifies, tracks, or monitors the market value of central office space.

⁷⁹See MFS at 7.

⁸⁰As U S WEST described in our Direct Case, we used outside consultants to verify what we considered to be reasonable market rates for our real estate, depending on the market conditions in existence in the geography in which the central office space was located. See U S WEST Direct Case at 45-46.

While other LECs attempted to arrive at a central office market rate using Building Owner Maintenance Association ("BOMA") (which is market, not cost, based), U S WEST chose otherwise. Our decision was not unreasonable.

2. Contingencies

A number of commentators attack the contingency components that U S WEST included in our construction element, with regard to the preparation of the leased physical space.⁸¹ Generally, they make the incorrect assumption/assertion that these contingencies amount to unwarranted mark-ups or duplicative overhead loadings. They are incorrect.

The contingencies that U S WEST included in our rates are reasonable, predictable costs that U S WEST will incur with regard to the construction of interconnectors' floor space. U S WEST will not be using our own employees in the initial phases of the design/construction work of interconnectors' leased physical spaces.⁸² We will be utilizing the services of professional engineering consultants for the design and bid preparation phases (for the reasons discussed below) of that process.⁸³ A U S WEST employee, i.e., Construction Management

⁸¹See ALTS at 23-25; Teleport/Denver at 9-11, 22; MFS at 22-23; Sprint at Appendix A, 5-6.

⁸²Thus, Teleport/Denver's speculation in this regard is incorrect. See Teleport/Denver at 10-11.

⁸³Contrary to the suggestion of Teleport/Denver at 10, the original design and construction of U S WEST's central office is
(continued...)

Project Engineer, will oversee the preparation of the leased physical space from the phase of the quotation preparation fee,⁸⁴ through the bid process, the interconnector's acceptance of the bid, and the actual physical construction of the leased physical space.⁸⁵

In crafting our EIC rates pertaining to the construction phase of EIC, U S WEST included a number of contingencies: a 15% contingency for professional consulting fees; a 20% contingency for unknown/unforeseen construction activities; and a 20% contingency factor for Americans with Disabilities Act ("ADA") compliance requirements. All of these contingencies are reasonable and should be sustained.

As stated, U S WEST will be using professional consulting services with regard to the design/initiation of the construction bid process. Their work activities will include the creation of

⁸³(...continued)
only marginally material to the offering of EIC service. While the central office, in general, has been designed and engineered with a view to housing telecommunications equipment (such that roofs, floors, etc. are adequate to the task), the establishment of separate cubicles/leased physical space has never been done. This is the work that the professional engineer consultant (discussed more fully below) will be involved with.

⁸⁴See pp. 29-31, where we discuss the work groups associated with that activity.

⁸⁵Thus, Teleport/Denver is incorrect that the inclusion of the costs associated with the Construction Management Project Engineer are additional to, or duplicative of, general U S WEST overheads or other construction functions. See Teleport/Denver at 10-11. Without EIC service, a Construction Management Project Engineer would not be necessary. And, as is made clear below, this U S WEST employee has job responsibilities/functions totally separate and apart from the professional engineering consultant.

bid documents, obtaining necessary permits from local authorities with regard to construction permit requirements and local/state building code and ordinance compliance, and assuring fundamental compliance with U S WEST's own insurers.

Professional consultants are necessary because state/local governments require certain health/safety/code assurances with regard to both the design and construction of the leased physical space. These assurances are accomplished via the "stamp of approval" demonstrated by the seal of a professional architect/engineer.

U S WEST does not maintain on its payroll architects or engineers whose job activities include verifying (via their professional seal) construction-activity compliance to governmental agencies -- whether the design/construction in question is solely internal to U S WEST or involves construction on behalf of third parties, such as interconnectors. Thus, we must secure those services elsewhere.

The standard way in which a professional engineer/architect charges for his/her services is through a percentage of the project involved. U S WEST has reflected this approach in our 15% contingency fee for professional consultant services. U S WEST is, obviously, going to incur a cost for these services.⁸⁶ U S WEST has no in-house employees capable of providing the services required and, the entities rendering the

⁸⁶Teleport/Denver is, therefore, incorrect that interconnectors are being charged this fee "whether or not [U S WEST] incurs [such costs]." Teleport/Denver at 10.

services necessary are the interconnectors (i.e., the cost causers). Thus, it is appropriate that these costs be recovered from the interconnectors themselves.

The 20% unforeseen construction contingency is a valid construction cost component, not uncommon in construction projects which are handled via a bid process, rather than a time and materials basis. In the latter situation, the entity desiring the construction to be done will pay the full cost of all the time and all the materials necessary to complete the job -- regardless of what "unforeseen" circumstances develop. This time- and materials-type evaluation process is similar to an ICB arrangement: it is idiosyncratic and it captures all the work activities and materials necessary to get the job done.

A bid process is totally different. It represents a bidding entity's best educated guess as to the labor and materials necessary. However, because the bidding entity cannot (generally) secure payment in excess of the bid submitted, the bid will contain some kind of contingency factor (i.e., a "buffer," which may or may not be disclosed to the entity receiving the bid) to protect the bidding entity against unforeseen construction problems that might develop. The bidding process is not so precise that a company submitting a bid will be willing, based on its visual inspection and original estimate, to

submit the bare estimate. Thus, U S WEST's 20% construction contingency is reasonable and should be sustained.⁸⁷

The 20% ADA contingency is also reasonable. Compliance with the ADA is an overhead expense to U S WEST with regard to its own internal compliance obligations, to be sure. And, in those parts of U S WEST's central offices wherein U S WEST utilizes the space, U S WEST will have expended whatever funds are necessary to comply with the ADA. In very many circumstances, however, interconnectors will not be located in those portions of U S WEST's central office.

In identifying space available for EIC service, U S WEST located "vacant" space in our central offices. Quite often, such space is on floors U S WEST was not actively occupying, and with regard to which U S WEST would have had no reason to render the space ADA-compliant. That space will now be required, because of the occupancy by interconnectors, to be compliant. That compliance will be assured through the design and engineering of the leased physical space itself. Assuring for ADA compliance of the space requires additional design/engineering work that would be unnecessary were the ADA not in existence.

⁸⁷Sprint observes that "If the construction estimates are reasonable, there should be no 20% contingency." Sprint at Appendix A at p.5. This observation ignores the fact that an estimate is always an estimate. Adding a buffer contingency to an estimate does not render the initial estimate, by the fact of the added buffer, unreasonable. Nor is the ultimate totalled figure rendered unreasonable by the fact that a contingency amount was considered appropriate.

It is appropriate to pass the costs of such compliance activities onto those whose occupancy generates the need for compliance, in the first instance -- the interconnectors. Representing this cost as a percentage is not inappropriate, as U S WEST has no current way of knowing, with any degree of certainty, the exact dollar amount necessary to assure compliance with regard to every interconnector. Obviously, without the presence of interconnectors, this cost would not be incurred. Thus, it is appropriate to include such costs in the rate for floor space.

3. U S WEST "Non-Usable" Space

Sprint criticizes U S WEST for the fact that U S WEST has adjusted its Floor Rental Rates by a certain factor to provide for the general provision of access to interconnectors.⁸⁸ It argues that no such factor should be permitted because access by interconnectors to central office common areas will be extremely limited.

Sprint's argument ignores the fact that there will clearly be corridors and hallways used primarily by interconnectors, as they make their way to and from U S WEST's dedicated EIC spaces - - often in a separate portion of the central office from U S WEST's equipment and from our general common areas. These hallways and corridors constitute space that is no longer usable by U S WEST for its own business/operational purposes. Such

⁸⁸See Sprint Appendix A at 13.